IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 559 of 2005-D

AGAINST THE ORDER DATED 07/10/2004 IN CMP 3367/04 IN CC.588/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT, PATTAMBI

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PETITIONER: PETITIONER/ACCUSED

P.K.SURESH, S/O.P.KRISHNAN,
POOVANTHARA HOUSE, P.O.ORUMANAYOOR,
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA

RESPONDENTS: COUNTER PETITIONER/COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING S.I. OF POLICE,
TRITHALA POLICE STATION.

BY PUBLIC PROSECUTOR MR.THOMAS JOHN AMBOOKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.559 of 2005

DATED THIS THE 17TH DAY OF JANUARY 2007

ORDER

The petitioner, who is the accused in C.C.No.588/2002 in the file of the Judicial Magistrate of First Class, Pattambi, has sought for setting aside the proceedings initiated against him on the ground that the complaint has been filed by the Sub Inspector of Police who is not the empowered officer as per Section 25 of the Kerala River Bank Management and Regulation of Sand Mining Act. The lower court has also found that the Sub Inspector is not competent under the particular statute, but declined the prayer of the petitioner to drop the proceedings. The relief was sought on the basis of the decision in **K.M.Mathew v. State of Kerala, 1992(1)KLT 1**. The above ratio has been overruled in **Adalat Prasad v. Rooplal Jindal, 2004(3)KLT 382(SC)**. Really the court below cannot be found fault with for declining the prayer of the petitioner/accused. The other offence alleged is under Section 162 read with Section 177 of the Motor Vehicles Act. The above sections of the Motor Vehicles Act has no relevance in the context at all. In the

circumstances, I find that the proceedings in C.C.No.588/2002 in the file of the Judicial First Class magistrate Court, Pattambi is liable to be quashed.

In the result, the proceedings in C.C.No.588/2002 in the file of the Judicial Magistrate of First Class Court, Pattambi is herewith quashed. The Crl.M.C.is allowed.

K.R.UDAYABHANU, JUDGE

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